

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Peace Analyst: Roger Lackey Bill Number: SB 129

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 08-26-99

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Privacy Ombudsman/Personal Information Collection & Disclosure/Actions

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended July 8, 1999.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 8, 1999, STILL APPLIES.

OTHER - See comments below.

### SUMMARY OF BILL

This bill would provide a cause of action for the unlawful disclosure of any personal information gathered by a commercial or governmental purpose which that entity subsequently releases to a third party without the express permission of the person to whom the information relates. This bill also would establish a Privacy Ombudsman who would be responsible for ensuring that all commercial and governmental records containing personal information are handled appropriately and that those records are not disclosed in violation of the law.

### SUMMARY OF AMENDMENT

The August 26, 1999, amendment deleted the earlier provisions of the bill and inserted the provisions discussed above. A more detailed discussion of the provisions added by the August 26, 1999, amendments are provided below in Specific Findings.

The August 16, 1999, amendment made changes to the bill which were eliminated by the August 26 amendments.

The Specific Findings discussed in the department's earlier analyses no longer apply. The implementation considerations provided in the department's analysis of the bill as amended July 8, 1999, still apply and are provided below, in addition to a new implementation consideration.

Except for the discussion above, the department's analysis of SB 129, as amended July 8, 1999, still applies.

### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> X PENDING

Legislative Director

Date

**Geoff Way for J. Rosas 9/10/1999**

### SPECIFIC FINDINGS

Currently, the **Information Practices Act of 1977** (IPA) requires state and local agencies to maintain in their records only that personal information relevant and necessary to their governmental purposes. The act also specifies that state and local agencies shall maintain their sources of information; that they shall maintain only relevant, accurate and complete records; that personal information only under specific circumstances shall be disclosed; and that the state or local agency shall maintain records regarding the disclosure of personal information and to allow individuals access to such information that pertains to them. Finally, the Information Practices Act establishes civil remedies for the enforcement of its provisions.

**State law** (Section 1798.3 of the Civil Code) defines "personal information" as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It also includes statements made by, or attributed to, the individual.

The **Revenue and Taxation Code** provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, shall be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose information only in limited circumstances and only to specific agencies as authorized by statute.

The Revenue and Taxation Code authorizes disclosure of confidential taxpayer information only: in judicial or administrative proceedings in connection with the taxpayer's civil or criminal liability, to legislative committees, to the Attorney General for specific types of proceedings, to the State Controller for the purpose of locating the owners of unclaimed property, the State Department of Social Services and the State Department of Health Services for the purpose of reporting unearned income, to the Student Aid Commission for the purpose of collection of student loans, to the Public Employees' Retirement System for the purpose of disbursing unclaimed benefits, and to the Parent Locator for the purpose of locating parents for child support collection. In addition, FTB has entered into a number of reciprocal agreements with the IRS and other taxing authorities that allow the sharing of confidential taxpayer information for purposes of enforcing tax compliance. Unwarranted or unauthorized disclosure of income tax return information is a misdemeanor offense.

**This bill** would provide that there would be a cause of action for the unlawful disclosure of any personal information gathered by a commercial or governmental entity, which that entity subsequently releases to a third party without the express permission of the person to whom the information relates.

**This bill** also would establish a Privacy Ombudsman who would be responsible for ensuring that all commercial and governmental records containing personal information are handled appropriately and that those records are not disclosed in violation of the law.

**This bill** would provide that the Privacy Ombudsman would be a nonbinding arbitrator for persons engaged in disputes regarding the unlawful disclosure of personal information by commercial or governmental entities. The Privacy

Ombudsman could recommend corrections or changes in commercial or governmental records, pursuant to an administrative proceedings to review the facts of the case. The administrative review would be completed within 60 days of receipt of a complaint regarding the unlawful use of personal information.

A commercial or governmental record holder found in the administrative proceeding to have unlawfully released personal information could seek judicial redress against the nonbinding decision of the Privacy Ombudsman.

**This bill** contemplates but has not provided definitions for the terms "personal or governmental purpose," "person," and "personal information."

#### Implementation Considerations

Currently, the IPA requires state and local agencies to maintain in their records only that personal information relevant and necessary to their governmental purposes. The Act also specifies that state and local agencies shall maintain their sources of information; that they shall maintain only relevant, accurate and complete records; that personal information only under specific circumstances shall be disclosed; and that the state or local agency shall maintain records regarding the disclosure of personal information and shall allow individuals access to information that pertains to them. Finally, the IPA establishes civil remedies for the enforcement of its provisions.

In addition, the **Revenue and Taxation Code** provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, shall be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose information only in limited circumstances and only to specific agencies as authorized by statute.

As a result of the Information Practices Act of 1977 and the Revenue and Taxation Code requirements, an individual whose personal information is unlawfully disclosed has the right to take action against the violating agency.

Definitions for the terms "personal or governmental purpose," "person," and "personal information" are contemplated but have not been provided.

This bill would allow an individual an additional avenue to seek an action against a commercial or governmental entity that has unlawfully disclosed personal information. Since the IPA already provides similar remedies for an individual whose personal information is unlawfully disclosed by a governmental entity, this bill would not significantly impact the department's programs and operations.

#### BOARD POSITION

Pending.